PATENT

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES

Appellant:	THOMAS W. DAVISON et al.	Confirmation No.:	2572
Serial No.:	10/713,820	Examiner:	NGUYEN, VI X
Filed:	NOVEMBER 14, 2003	Group Art Unit:	3734
Docket No.:	1291.1174101	Customer No.:	28075
Title:	CANNULA FOR RECEIVING SURGICAL INSTRUMENTS		

REPLY BRIEF UNDER 37 C.F.R. § 41.41

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Rachel Gagliardi — Date: April 2, 2008

Dear Sirs:

Pursuant to 37 C.F.R. § 41.41, Appellants hereby submit this Reply Brief in response to the Examiner's Answer mailed February 5, 2008.

Real Party in Interest

The real party in interest in the application has changed, and is now Zimmer Spine, Inc., a corporation organized and existing under and by virtue of the laws of Delaware, and having its principal offices at 7375 Bush Lake Road, Minneapolis, MN 55439, USA. A Certificate of Merger merging Endius, Inc. into Zimmer Spine, Inc. as filed on March 28, 2008. Copies of the documents and Acknowledgement Receipt are attached.

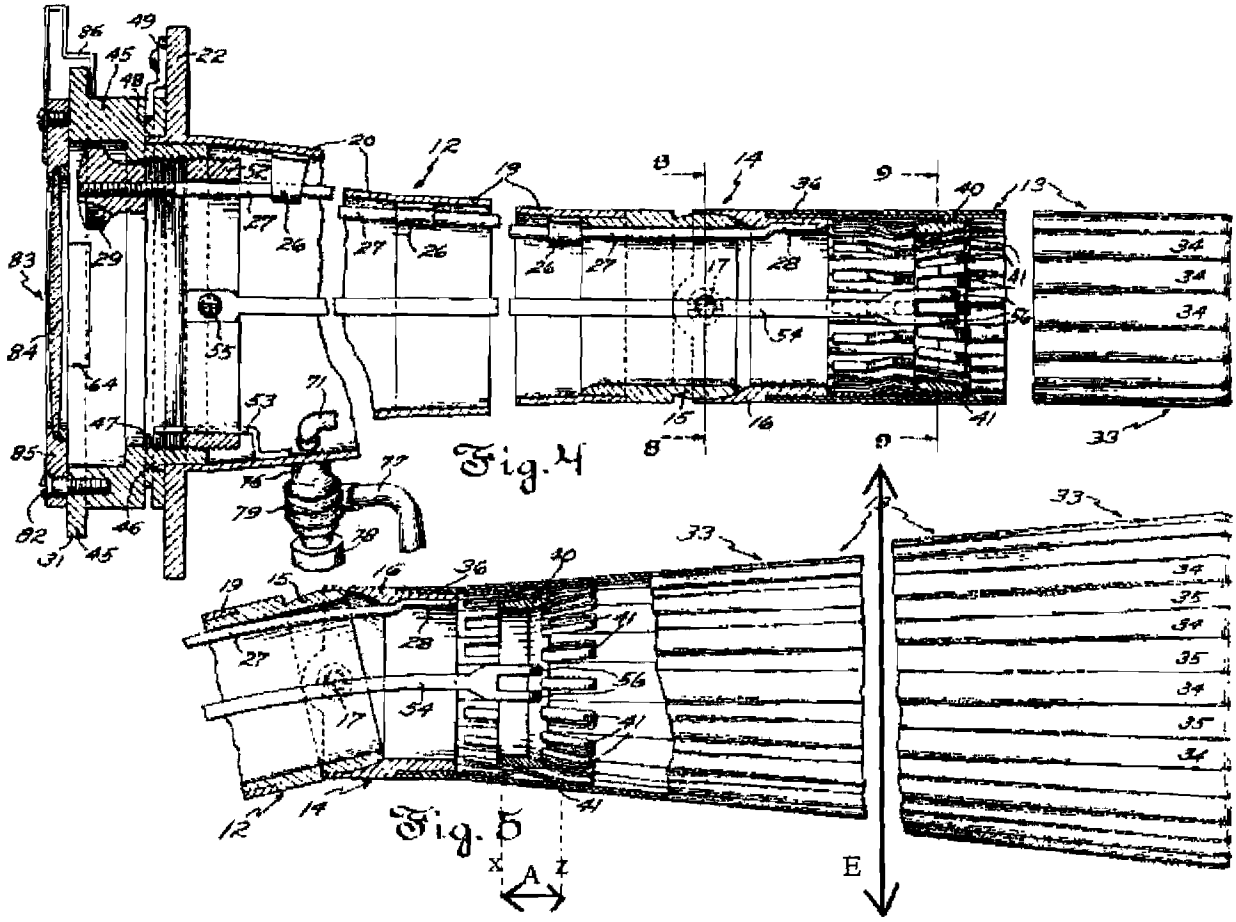
Claim 44

In the Examiner's Answer, at page 3, lines 10-11 of the rejection over Murdock, the Examiner states, "the examiner interprets a guiding mechanism which is the same as the arcuate guide 40". In the Response to Argument section at page 4, the Examiner asserts that element 40 of Murdock is considered to anticipate the claimed arcuate guide "because the arcuate guide is not further defined." Appellants respectfully disagree. The claimed arcuate guide is specifically defined in independent claim 44:

> an arcuate guide having an elongate length, a first end and a second end along which a portion of the elongate body is moveable from its contracted condition to its expanded condition, the arcuate guide extending generally in the direction of expansion between the contracted and expanded conditions.

Emphasis added. Appellants respectfully submit that the cam ring 40 of Murdock does not have the identical structure or function of the claimed arcuate guide. The Examiner asserts that the elongate length would be the whole segment from the left to the right dimension of element 40, and first and second ends would locate from the left and right edges in the figures 4-5, thus the element 40 does have an elongate length with the first and second end along which a portion of the elongate body that is moveable from its contracted condition to its expanded condition.

In the Appeal Brief, section VII(A)(ii), Appellants presented two possible interpretations of Murdock, each lacking an element recited in claim 44. The Examiner has, for the first time, described how Murdock is being interpreted, which corresponds with the second possible interpretation. The Examiner has not, however, addressed Appellants' arguments regarding this interpretation. As discussed in the Appeal Brief, the interpretation of the width of the cam ring 40 being equated with the claimed "elongate length", represented in FIGS. 4 and 5 as the left-to-right dimension of cam ring 40, does not satisfy the claimed elements of the arcuate guide. The Examiner's interpretation of Murdock is illustrated in the marked-up FIG. 5 shown below. The "elongate length" of the asserted arcuate guide (element 40) is shown as A, and the 1st and 2nd "ends" are shown as x and z, respectively. The direction of expansion of the blades 33 is shown as E.



As can be seen, while the cam ring 40 does appear to have a length (A) and first and second ends (x, z) along which a portion of the elongate body (clips 41) is moveable from its contracted condition (FIG. 4) to its expanded condition (FIG. 5), the width (A) of the cam ring 40 extends longitudinally, while the direction of expansion between the contracted and expanded conditions is transverse (E). The cam ring 40 of Murdock thus cannot be seen to anticipate the claimed "arcuate guide extending generally in the direction of expansion between the contracted and expanded conditions", as recited in claim 44. Murdock thus fails to teach each and every element of claim 44. Appellants respectfully submit the rejection is in error and should be withdrawn.

Claim 50

The Examiner appears to be asserting once again that element 40 of Murdock anticipates the claimed guiding mechanism, however, the Examiner has, for the first time, asserted that element 41 represents the claimed curved elongate portion of element 40. Appellants respectfully disagree. Claim 50 specifically recites, "a guiding mechanism comprising a curved elongate portion". Murdock describes elements 40 and 41 as follows:

> These actuating devices comprise a rigid cam ring 40 that is constantly in camming engagement with the spaced apart cammable surfaces of a circular series of rigid clips 41 which are of recurvate or hairpin shape and fixed respectively on the inside surfaces of the blades 33.

See column 4, lines 18-23. Murdock thus teach cam ring 40 as a separate element from the series of clips 41. Clips 41 thus cannot be seen to be a curved elongate portion of the cam ring 40. Further, clips 41 of Murdock do not extend in a transverse direction, but rather extend in a longitudinal direction as shown in FIG. 5. Additionally, a portion of the elongate body in Murdock does not appear to be moveable in a transverse direction along a curved elongate portion of the clips 41. Rather, Murdock teaches "rigid clips 41 which are of recurvate or hairpin shape and fixed respectively on the inside surfaces of the blades 33." See column 4, lines 21-23. The portion of the elongate body of Murdock that is moveable from a contracted condition to an expanded condition appears to be the blades 33, which are fixed to the clips 41. The clips 41 thus cannot be seen to have a curved elongate portion along which a portion of the elongate body is moveable, as is recited in the claims. Murdock thus does not appear to teach a guiding mechanism comprising a curved elongate portion extending in a generally transverse direction along which a portion of an elongate body is moveable, as is recited in the claim. Murdock thus cannot be seen to anticipate independent claim 50 and the claims dependent thereon.

For the reasons stated above, the rejection of claims 44, 45, and 47-57 under 35 U.S.C. §102(b) should be reversed.

Respectfully submitted,

THOMAS W. DAVISON et al.

By their Attorney,

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